Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

In the Matter of	)	
	)	
Equal Access and Interconnection	)	CC Docket No. 94-54
Obligations Pertaining to	)	RM-8012
Commercial Mobile Radio Services	)	

COMMENTS OF ONECOMM CORPORATION

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SUMMARY

The Commission should not impose equal access requirements on commercial mobile radio service ("CMRS") providers. Equal access requirements historically have been imposed to mitigate the effect of local exchange carriers' ("LECs") bottleneck facilities and monopoly power. Because CMRS providers, particularly new entrants such as digital specialized mobile radio ("SMR") providers, possess neither bottleneck facilities nor monopoly power, the rationale for imposing equal access obligations simply does not exist in the rapidly evolving wireless market.

In the event that the Commission imposes equal access requirements on some or all cellular CMRS carriers, such obligations should not be imposed on non-cellular CMRS carriers, none of which possesses any market power much less bottleneck facilities or monopoly power. Regulatory parity does not require extension of costly and burdensome regulation inappropriate to non-cellular CMRS carriers solely for the sake of uniformity.

If equal access is imposed on some or all non-cellular CMRS carriers, the requirements should not include costly balloting, presubscription and allocation measures. CMRS carriers should be required to offer equal access only upon a bona fide request.

The existing cellular model for negotiation of CMRS interconnection to LECs' facilities appears to have worked reasonably well. OneComm, however, supports the Commission's suggestion that interconnection agreements be required to provide guarantees that all similarly situated CMRS providers would have access to the most favorable rates and conditions provided by a LEC to a single CMRS provider.

Finally, the Commission is well-advised to begin collecting technical information about eventual CMRS-to-CMRS interconnection. However, it is premature to devise a regulatory interconnection regime for a CMRS market that is still in its infancy.

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OneComm Corporation ("OneComm"), pursuant to Section 1.415 of the rules of the Federal Communications Commission ("Commission" or "FCC")[1] hereby submits its Comments in response to the Notice of Proposed Rule Making ("NPRM") and Notice of Inquiry ("NOI"), FCC 94-145, released July 1, 1994 in the above-captioned proceeding.[2] The NPRM solicits comment on whether equal access obligations should be imposed on commercial mobile radio service ("CMRS") providers and whether CMRS interconnection arrangements with local exchange carriers ("LECs") should be tariffed. The

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1 47 C.F.R. § 1.415.

2 The NPRM and NOI comment date originally was August 30, 1994. By its Order, DA 94-877, dated August 11, 1994, the Commission granted to GTE and RCA an extension of time until September 12, 1994 to submit comments. The Commission subsequently applied this extension to all parties submitting comments.

NOI begins an inquiry into the technical aspects of CMRS-to-CMRS interconnection.

I. INTEREST OF ONECOMM

OneComm, previously CenCall Communications Corp., is one of the nation's largest providers of SMR service. OneComm is headquartered in Denver, Colorado and has more than 375 employees and serves more than 45,000 subscribers. OneComm provides SMR service in the following major cities: Seattle, Washington; Portland, Oregon; Denver, Colorado; Cincinnati and Columbus, Ohio; Indianapolis, Indiana; Oklahoma City, Oklahoma; Minneapolis, Minnesota; Pittsburgh, Pennsylvania; and Kansas City, Kansas and Missouri.

OneComm initiated wide-area digital service in Denver this spring and expects to initiate wide-area service in the Seattle area this fall. OneComm's wide-area digital SMR service utilizes the spectrally efficient Motorola Integrated Radio Services ("MIRS") system. MIRS is a digital system utilizing time division multiple access ("TDMA") and spectrum re-use, which is estimated to increase spectrum efficiency up to 15 times over analog SMR spectrum utilization. MIRS also uses switching equipment manufactured by Northern Telecom to connect its sites to the public switched network. The MIRS system is not capable of providing 1+ access to a preferred interexchange carrier

("PIC"). As described more completely below, the MIRS system currently does not have the ability to deliver equal access information to visited systems.

II. BACKGROUND

This proceeding continues the Commission's implementation of the Omnibus Budget Reconciliation Act of 1993 ("Budget Act"), as well as the Commission's own policy initiatives in overseeing wireless services.

The Budget Act amended Sections 303(n) and 332 of the Communications Act of 1934, as amended (the "Act" or "Communications Act")[3] by (1) establishing a new classification of commercial mobile service, which the Commission has termed CMRS; (2) classifying CMRS carriers as common carriers, a classification effective for some former private carriers after a phase-in period; (3) preempting state entry and rate regulation of CMRS; (4) granting the Commission discretion to forbear from enforcing certain sections of Title II of the Act against CMRS carriers; and (5) requiring that the Commission review and report on competitive market conditions in the CMRS market.

The Commission found that Congress had two principal objectives in amending Section 332 -- first, consistent with the public interest, that similar services

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3 47 U.S.C. § 151, et seq.

be accorded similar treatment, and second, that an appropriate level of regulation be administered for CMRS services.[4] The Commission partially implemented Section 332 in its CMRS Second Report by establishing the CMRS classification, identifying existing services to be reclassified as CMRS, and deciding which sections of Title II to apply to CMRS providers.

The CMRS Second Report further stated that, while the cellular market was not yet deemed to be fully competitive, "a variety of factors (e.g., the advent of personal communications services) will work to enhance competition in the cellular marketplace in the near term."[5]

On August 9, 1994, the Commission adopted its Third Report and Order in GN Docket No. 93-252.[6] As of the filing date for these Comments, the text of the Third Report and Order had not been released. The news release announcing its adoption indicated that the Commission has concluded that virtually all CMRS services are competitive with each other to some degree, and that in establishing comparable technical requirements, the Commission would define broadly

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4 Implementation of Sections 3(n) and 332 of the Communications Act, Regulatory Treatment of Mobile Services, Second Report and Order, GN Docket No. 93-252, 9 FCC Rcd 1411, 1418 (1994) ("CMRS Second Report").

5 CMRS Second Report at 1484.

6 See FCC News Release, Report No. DC-2638 (Aug. 9, 1994).

the range of services deemed substantially similar. In the instant proceeding, the Commission seeks comments on a proposed equal access and interconnection regulatory model for some or all CMRS providers.

III. ARGUMENT

A. THE COMMISSION SHOULD NOT IMPOSE EQUAL ACCESS REQUIREMENTS ON CMRS CARRIERS

Equal access is part of a regulatory structure that was "borne of the MFJ."[7] Equal access historically has been imposed to offset local exchange carriers' monopoly power and to thwart their ability to prevent access to their bottleneck facilities.

Equal access is neither appropriate nor necessary to ensure access to CMRS carriers' networks and ensure competition in the long distance market. The wireless communications marketplace currently provides multiple avenues of access to potential subscribers, and after the near term introduction of broadband and narrowband personal communications service ("PCS") and the continued development of wide-area SMR service, the CMRS market will be robustly competitive. Onecomm agrees that "the rationale for

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7 NPRM, Separate Statement of Commissioner James H. Quello ("Quello Statement").

imposing equal access obligations in the context of 'bottleneck facility' market power is not apparent here."[8]

Rather, the public interest is served by forward-looking regulation that anticipates the fully competitive market structure enabled by the Commission's broadband and narrowband PCS, 220 MHz and SMR spectrum allocations. The Commission should "bring everyone into relative parity based on the evolution of full competition in the PCS market."[9]

1. Equal Access Requirements Were Imposed On LECs To Remedy Anticompetitive Abuse Of Bottleneck Facilities

When it approved the Bell System divestiture decree, the Modified Final Judgment ("MFJ"),[10] the court stated that "[t]he key to the Bell System's power to impede competition has been its control of the local telephone service."[11] The local exchange monopoly formed a bottleneck facility,[12] which often represented the "sole means" for long distance carriers to access their customers.[13]

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8 NPRM, Separate Statement of Commissioner Andrew C. Barrett.

9 Id.

10 United States v. AT&T, 552 F. Supp. 131 (D.D.C. 1982), aff'd sub nom. Maryland v. United States, 460 U.S. 1001 (1983).

11 Id. at 223.

12 See id. at 160-65.

13 MTS and WATS Market Structure, Phase III, Notice of Proposed Rulemaking, CC Docket No. 78-72, 94 FCC 2d 292, 298 (1983) ("MTS/WATS Notice").

Bell Operating Company ("BOC") equal access obligations were imposed to remedy anticompetitive exclusion from local exchange bottleneck facilities.[14] The Commission articulated a similar rationale in adopting its own equal access requirements in the mid-1980s.[15] It also used the MFJ's definition of equal access in adopting equal access rules for independent LECs,[16] all of whom also control bottleneck facilities and possess monopoly power.

2. Concerns About Abuse Of LEC Bottleneck Facilities And Monopoly Power Underlay The Court-imposed Equal Access Obligations On RBOC Cellular Carriers

MFJ court-imposed equal access obligations on RBOC cellular carriers are grounded in the court's concern that the historic BOC monopoly control of local exchange bottleneck facilities could be leveraged by their cellular affiliates to impede long distance competition. The court also was concerned that the BOCs, in connection with their cellular affiliates, could re-enter the long distance market from which they had been restricted.[17] Therefore, the basis

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14 United States v. AT&T, 552 F. Supp. at 161, 165, 188, 223.

15 MTS/WATS Notice at 298.

16 NPRM at 6, 7.

17 United States v. Western Elec. Co., 673 F. Supp. 525, 551 (D.D.C. 1987).

for existing equal access requirements imposed on BOC cellular systems is not that the cellular systems constitute bottleneck facilities,[18] but rather that their affiliation with a BOC could provide them with anticompetitive opportunities in the long distance market.

In response to a BOC petition to lift the MFJ restriction on BOC cellular affiliates' provision of interexchange service, the Department of Justice in July of this year recommended that the cellular equal access obligation remain in place in return for a lifting of the interexchange restriction. Again, the concern was focused on the BOCs' ability to leverage their bottleneck facilities and monopoly power.[19]

More recently, the equal access provisions accepted to win approval of the AT&T/McCaw merger say more about AT&T's dominant position in the long distance market than about cellular service per se. The United States filed an antitrust suit alleging that the merger would violate Section 7 of the Clayton Antitrust Act.[20] The suit alleged

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18 See, e.g., United States v. Western Elec. Co., No. 82-0192 slip op. at 17-18 (D.D.C. Aug. 25, 1994) and slip op. at 8-9 (D.D.C. Feb. 26, 1986).

19 Memorandum of the United States in Response to the Bell Companies' Motions for Generic Wireless Waivers at 27-49, United States v. Western Elec. Co., (dated July 25, 1994) (No. 82-0192) (recommending approval despite AT&T's Opposition challenging whether the BOCs' control of landline exchange would result in discriminatory interconnection).

20 Complaint of the United States of America, United States v. AT&T (D.D.C.) (No. 94-1555) (filed July 15, 1994).

that, among other things, competition would be lessened in the provision of interexchange services to cellular subscribers because the merger would combine the two dominant carriers in those markets in which AT&T and McCaw compete.[21] As part of the stipulation settling this action, AT&T and McCaw agreed that McCaw's Cellular systems will provide IXC equal access.[22] The primary reason is that AT&T commands a 70 percent share of interexchange services in the relevant markets, not that cellular systems constitute bottleneck facilities.[23]

In sum, equal access requirements since the AT&T divestiture have been imposed on LECs to remedy abuse of bottleneck facilities and ensure competition in the long distance market. Like a regulatory house of cards, equal access requirements were extended to cellular systems affected by the MFJ line-of-business restrictions, even though they themselves do not possess bottleneck facilities. Other CMRS providers, however, by virtue of their history, parentage and increasingly competitive marketplace, do not possess bottleneck facilities or monopoly power that would support the imposition of equal access obligations.

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21 Id. at 12.

22 Stipulation, United States v. AT&T (D.D.C.) (No. 94-1555) (filed July 15, 1994).

23 Id.

B. EQUAL ACCESS SHOULD NOT BE IMPOSED ON NON-CELLULAR CMRS CARRIERS, EVEN IF IT IS IMPOSED ON SOME OR ALL CELLULAR CARRIERS

1. Increasingly Competitive Market Conditions Do Not Require Imposition Of Equal Access On Non-cellular CMRS Carriers

As noted above, CMRS systems do not constitute bottleneck facilities. Not only do non-cellular CMRS carriers lack monopoly power, they lack any market power.[24] Therefore, there is absolutely no basis for imposition of equal access on CMRS providers.

Moreover, application of the two-pronged public interest test outlined by the Commission in the NPRM further demonstrates that imposition of equal access obligations on non-cellular CMRS carriers is unwarranted. The test assesses (1) whether the market power possessed by CMRS carriers would justify imposition of equal access, or (2) whether equal access would further other policy goals.[25]

First, as noted above, the Commission has already found that non-cellular CMRS carriers lack market power. Moreover, the non-cellular CMRS carriers' position in the market will become even further diluted, based upon the

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24 CMRS Second Report at 1467.

25 NPRM at 17.

Commission's own analysis, by full development of a multiple carrier CMRS market. For example, near term many markets will be served by two cellular carriers, multiple broadband and narrowband PCS providers, 220 MHz service providers, and at least one wide-area SMR system. The market characteristics for non-cellular CMRS carriers provide no basis whatsoever for imposition of equal access requirements, even where equal access is imposed on some or all cellular carriers.

Second, in an increasingly competitive CMRS market, the referenced policy goals will be more fully achieved through competition rather than through regulation. A multiple carrier market will foster competition; competition will push down subscriber prices; and non-dominant carriers without market power will lack the incentive and ability to deny access to networks for anticompetitive reasons.

Therefore, the only rationale upon which the Commission could rely for imposition of equal access on non-cellular CMRS carriers requires a rigid interpretation of regulatory parity. This concept, however, as demonstrated below, was not contemplated by Congress to require such onerous regulatory requirements as equal access.

2. Regulatory Parity Does Not Require Straightjacket Imposition Of Costly And Burdensome Regulation Merely To Achieve Uniformity

The Communications Act does not require that all CMRS carriers be treated identically. The legislative history to the Act indicates that Congress explicitly contemplated differential regulation of CMRS carriers depending on market conditions. It is significant that the NPRM does not cite to a section of the Act when it references "considerations of regulatory parity [that] might weigh in favor of imposing similar regulatory obligations"[26] should equal access be imposed on some or all cellular carriers. This is because Section 332 of the Act requires only that all CMRS providers be regulated as common carriers.

The Budget Act also contains a transitional rule making requirement that the Commission modify its rules to reclassify certain private carriers as common carriers as may be necessary and practical.[27] However, the rule making provision merely required that existing private carrier regulation be made comparable to common carrier rules. It

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26 NPRM at 23.

27 Act of Aug. 10, 1993, Pub. L. No. 103-66, Title VI, § 6002(d)(3), 107 Stat. 312, 397.

does not require that all common carrier mobile services be treated identically.[28]

Congressional intent, as evidenced by the language of the Conference Report to the Budget Act,[29] likewise does not require that all commercial mobile carriers be treated identically. The Conference Report states that the intent of Section 332(c)(1)(A) is "to establish a Federal regulatory framework to govern the offering of all commercial mobile services."[30] The Conference Report also states that "the overall intent of this subsection as implemented by the Commission, [is] that, consistent with the public interest, similar services are accorded similar regulatory treatment."[31] This terse statement of regulatory parity, conditioned on the Commission's public interest finding, replaced (after House/Senate negotiations) the more expansive regulatory parity language appearing in the House Report.[32]

The Conference Report contains other broad language endorsing differential treatment of CMRS carriers, depending

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28 Id.

29 H.R. Rep. No. 213, 103rd Cong., 1st Sess. 490-94 (1993) ("Conference Report").

30 Id. at 490.

31 Id. at 494.

32 See H.R. Rep. No. 111, 103rd Cong., 1st Sess. 259-60 (1993) ("House Report").

upon market conditions. In discussing the Commission's authority to forbear from enforcing portions of Title II, the Conference Report states that

> the purpose of this provision is to recognize that market conditions may justify differences in the regulatory treatment of some providers of commercial mobile services. While this provision does not alter the treatment of all commercial mobile services as common carriers, this provision permits the Commission some degree of flexibility to determine which specific regulations should be applied to each carrier.[33]

Therefore, Congress explicitly anticipated that, within a common carrier regulatory regime for CMRS carriers, the Commission would retain discretion to regulate differentially. Differential regulation of CMRS carriers, where appropriate to market conditions, would not affect the common carrier nature of CMRS. There is no dispute that non-cellular CMRS providers lack market power, and as such, can be treated differently from CMRS providers that do possess market power.

3. Equal Access Requirements Would Impose A Tremendous Cost Disproportionate To Any Potential Benefit

The costs of providing equal access would far outweigh any potential benefit to OneComm's subscribers.

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33 Conference Report at 491.

OneComm uses the MIRS system, as do other providers of wide-area SMR service. OneComm is informed by Motorola that the switches currently installed in MIRS systems are not capable of providing 1+ access to a PIC. A switch upgrade apparently slated for future release with MIRS systems will allow for 10XXX access, while yet another upgrade, scheduled to be deployed later will allow for automatic routing to a single predetermined PIC.

Moreover, the MIRS system does not forward PIC information necessary to the provision of equal access for roamers. Even if the necessary switches eventually are installed or upgraded, roamers' hand-off would present a separate technical impediment.

Therefore, while new purchases of MIRS hardware systems may eventually allow for some form of equal access, currently installed systems would require expensive upgrades. The cost of upgrading or replacing switches - not to mention the other costs of equal access conversion - would be enormous. These unnecessary costs would affect disproportionately entrepreneurial SMR carriers lacking large revenue streams over which to spread such costs.

For OneComm's subscribers to benefit from its equal access obligations, they must realize substantial savings in long distance rates. However, long distance rates charged to OneComm's customers could actually rise under equal

access. Under equal access, OneComm subscribers could lose the benefit of discounted IXC rates that OneComm has negotiated and passed to its subscribers. Because individual subscribers lack bargaining power, they would pay retail rates. Moreover, if the Commission imposes boundaries for distinguishing toll and local calls, as described below, it could result in more calls being designated as toll calls, possibly at higher rates.

To the extent that equal access is advocated to promote competition, this goal is better served by ensuring that a multiple carrier CMRS market develops. Head-to-head competition among many CMRS carriers will ensure low total monthly consumer bills. The Commission already has gone a long way to ensure a competitive wireless market by allocating substantial spectrum for broadband and narrowband PCS, as well as for 220 MHz services. The adoption of a revised regulatory regime for wide-area SMR carriers also guarantees additional strong wireless competition.

4. Imposition Of Artificial Equal Access Boundaries Would Compromise The Seamless Wireless Environment Supported By The Commission

If subjected to equal access obligations, OneComm and other wireless carriers would lose the flexibility to respond to marketplace requirements in providing seamless wireless service. OneComm now hands traffic to an IXC based

upon OneComm's service footprint and other economic and operational characteristics. OneComm hands off traffic to an IXC if it can carry the traffic more economically. OneComm carries the traffic internally where its own facilities are more efficient. Therefore, OneComm and other wireless carriers not subject to equal access obligations are able to design their systems around cost considerations and the dictates of the marketplace, rather than on an artificial set of LATA or regulatory boundaries.

Service areas imposed under equal access obligations could impose artificial breaks. For example, the current LATA boundaries did not develop from market forces. Rather, they were imposed by the MFJ court. The court administers a seemingly endless parade of waiver requests from the BOCs demonstrating the artificial nature of these boundaries. Similarly, there is nothing inherent about the wireless market that favors hand-off of traffic to an IXC based upon any particular size service area.

Carriers not subject to equal access requirements give traffic to IXCs based upon individual system characteristics. For example, OneComm currently plans just one IXC point of presence ("IXC POP") in each major market (i.e., one switch per market, and one IXC POP per switch). OneComm plans to hand off traffic to the IXC carrier only where it is less costly and efficient than carrying that

call on its own network. Therefore, "local" service for OneComm encompasses a substantially wider area than what likely would be mandated under an equal access obligation.

Any Commission attempt to define what is "local" wireless service and what is "long distance" wireless service runs counter to market forces. It also would contravene the Commission's longstanding policy of encouraging entrepreneurial SMR operations. Efficient and cost effective operations require that the wireless marketplace, not the regulator, should decide where and if wireless traffic gets handed to an IXC.

C. IF EQUAL ACCESS IS IMPOSED, ONLY MINIMAL MEASURES SHOULD BE REQUIRED

OneComm submits that a strict cost benefit analysis persuasively shows that equal access obligations should not be imposed upon non-cellular CMRS carriers. If the Commission, nonetheless, decides to impose equal access obligations on non-dominant CMRS carriers, it should apply minimal measures. Most important, no equal access obligation should be imposed at all unless a CMRS provider receives a bona fide request from a long distance carrier.

Equal access presumably would require 1+ access for customers. However, as noted above, the necessary switching equipment upgrades are not now installed in wide-area SMR providers' MIRS systems. Moreover, forwarding PIC

information for roamers is not available. OneComm does not have assurance that such switches will be available immediately, or that PIC forwarding is even feasible. Therefore, a phase-in period of at least three years for new equipment installations and ten years to amortize and replace existing equipment would be necessary if equal access is imposed on wide-area SMR carriers.

Moreover, only a small amount of OneComm's total traffic is interstate. This small stream of traffic does not warrant the exorbitant costs that small companies lacking large staffs will incur to administer cumbersome balloting, presubscription and allocation measures. If equal access is imposed on entrepreneurial wireless carriers, it should not include such high-overhead administration functions.

The Commission should continue to encourage innovation in wireless services by allowing service and price bundling, even if equal access is imposed. Allowing CMRS carriers wide berth in their ability to package different services encourages creative service offerings. For example, cellular carriers not subject to equal access may offer sharply discounted long distance rates to encourage more air time usage. Such practices have the positive effect of increasing overall wireless traffic. The Commission should encourage these innovative service

offerings by allowing continued bundling as part of any equal access requirements that may be imposed.

D. THE CURRENT CELLULAR MODEL FOR NEGOTIATION OF INTERCONNECTION ARRANGEMENTS HAS YIELDED GOOD RESULTS

OneComm has enjoyed favorable results overall negotiating interconnection agreements with LECs. OneComm currently interconnects with the local exchange subsidiaries of GTE and three BOCs. These interconnections are implemented pursuant to both tariff and negotiated contract. In every instance, OneComm has had more satisfactory results with negotiated contract arrangements than with tariffs. In OneComm's experience, the key issue faced in contract negotiations has been the technical aspects of interconnection, rather than the price. It is OneComm's understanding that LECs generally offer the same price to cellular and wide-area SMR carriers. Nonetheless, OneComm would support the Commission's suggestion that interconnection agreements guarantee that the most favorable terms, conditions and rates provided by a LEC to one CMRS provider be made available to all.[34]

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34 See NPRM at 50.

E. IT IS PREMATURE TO IMPOSE INTERCONNECTION AND RESALE REQUIREMENTS ON CMRS CARRIERS

The Commission is appropriately collecting technical information on interconnection and resale arrangements for CMRS carriers. However, the structure of the CMRS industry is still emerging. It would be premature to impose general interconnection and resale requirements on the CMRS marketplace. In particular, it is premature to impose these obligations on wide-area SMR providers, which currently lack a coherent regulatory structure. The exact nature of PCS offerings also is not yet clear. Therefore, industry interconnection standards are better formulated through an informal consultation process (in which OneComm will gladly participate) than by formal rulemaking. The collection of CMRS interconnection and resale data would appropriately be conducted as part of the Commission's ongoing effort to monitor the state of competition in the CMRS market.

CONCLUSION

The Commission's allocation of spectrum for PCS, SMR and 220 MHz service providers will result in a highly competitive CMRS market. A forward-looking regulatory model for CMRS providers is needed that recognizes the vastly different market conditions that attend the evolving